

27. (New) The method as set forth in claim 26, wherein the cleat-free area is formed by at least one technique from the group consisting of removing an inner circumferential row of cleats, moving the inner row of cleats away from the inner edge of the rim, extending the inner circumferential edge of the rim inward toward the compaction machine or a combination thereof.

As required

28. (New) A compactor wheel mountable on an axle of a compaction machine, said compactor wheel comprising:

- a hub mountable to an axle of a compaction machine;
- a rim mounted around the outer circumference of said hub, said rim having a face and an inner circumferential edge and an outer circumferential edge;
- a plurality of compaction cleats circumferentially spaced on, transversely spaced across and mounted to said face of said rim; and
- an axle guard system comprising a cleat-free area formed circumferentially around said rim on said face and having a width extending from said inner edge across said rim toward said outer edge a preselected distance.

REMARKS

In the Office Action, it is stated that "the disclosure of the parent application does not disclose or even suggest that the width of cleat-free area of the rim can be measured against anything other than the cleats 28 which are secured to the wheel rim." This statement is respectfully traversed.

The above-identified application expressly states that the cleat-free area can extend up to about 10 inches from the inner edge of the compactor wheel (see page 7, lines 15-16). The above-identified application also states that the cleat-free area can be formed, for example, by removing the inner circumferential row of the cleats, by moving the inner row of the cleats away from the inner edge of the wheel, by extending the inner edge of the wheel rim inward toward the compaction machine, or by a combination thereof (See page 2, lines 41-52 and page 7, lines 13-21). It is submitted that the above statements in the above-identified application make it clear that the cleat-free area is not limited to the width of any cleat.

Pursuant to 37 CFR §1.606 and MPEP §2306, the Examiner is requested to determine that there is interfering subject matter currently claimed in the above-identified application and U.S. Patent No. 5,687,799 ('799 patent), which is patentable to the above-identified applicant subject to a judgment in the interference. It is requested that the Examiner take notice of the fact that the '799 patent and the above-identified application claim the same or substantially the same patentable invention. The Examiner is requested to compare the disclosures and claims of the above-identified application and of the '799 patent (e.g., compare Fig. 1 from each). Based on this fact, it is also requested that an interference action be invoked between the above-identified application and the '799 patent to resolve the issue of priority. Both the above-identified application and that of the '799 patent were pending before the USPTO at the same time. It is submitted that the above-identified applicant should be declared the senior party to the interference action. The above-identified application was originally filed on October 19, 1995 as the provisional patent application Serial No. 60/005,639. The '799 patent was filed on August 12, 1996. Therefore, the above-identified application has a priority filing date that is almost a year before the filing date of the '799 patent.

Support for the amendment to claim 21 and for new claims 24-27 can be found, for example, from page 2, line 9 through page 3, line 21 of the above-identified application. With regard to new claim 28, it is submitted that the term "preselected distance" is inherent to the teaching of the above-identified application and, therefore is not new matter. For example, please see page 2, line 9 through page 3, line 21 of the above-identified application for support.

The broadest claim in the '799 patent is claim 1. Applicant's new claim 28 is broader in certain respects than claim 1 of the '799 patent, but is substantially the same, and represents a suitable count for an interference with the '799 patent. In accordance with 37 C.F.R. §1.607, therefore, applicant proposes that the count be identical to applicant's claim 28 and read as follows:

A compactor wheel mountable on an axle of a compaction machine, said compactor wheel comprising:
a hub mountable to an axle of a compaction machine;
a rim mounted around the outer circumference of said hub, said rim having a face

and an inner circumferential edge and an outer circumferential edge;

a plurality of compaction cleats circumferentially spaced on, transversely spaced across and mounted to said face of said rim; and

an axle guard system comprising a cleat-free area formed circumferentially around said rim on said face and having a width extending from said inner edge across said rim toward said outer edge a preselected distance.

CONCLUSION


For the foregoing reasons, applicant respectfully submit that claims 1-28 are in condition for allowance. In addition, these claims are directed to subject matter that is patentably indistinct from claims 1-10 in the '799 patent. An interference based on the proposed count is therefore appropriate.

Accordingly, applicant requests that the Examiner:

- (1) Prepare and transmit Interference Initial Memorandum recommending the Administrative Patent Judge institute an interference between the present application and the '799 patent.
- (2) Propose the count as set forth in this Request and designate all of the applicant's claims 1-28 and the '799 patent claims 1-10 as corresponding to the count.

Respectfully submitted,

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Version With Markings to Show Changes Made

21. (Amended) A compactor wheel mountable on an axle of a compaction machine, said compactor wheel comprising:

a hub mountable to an axle of a compaction machine;

a rim mounted around the outer circumference of said hub, said rim having a face and an inner circumferential edge and an outer circumferential edge;

a plurality of compaction cleats circumferentially spaced on, transversely spaced across and mounted to said face of said rim; and

an axle guard system comprising a cleat-free area formed circumferentially around said rim on said face and extending widthwise from said inner edge across said rim toward said outer edge, with said cleat-free area being wide enough that refuse is less likely to be directed toward the axle of the compaction machine [at least about the width of a compaction cleat].

24. (New) The compactor wheel as set forth in claim 21, where said cleat-free area is wide enough that cable, rope or wire refuse is less likely to be directed toward the axle and end up wrapped around the axle.

25. (New) A compaction machine comprising:

a body suitable for compacting refuse, said body having opposite sides;

an axle having two ends and mounting said body; and

a compactor wheel according to claim 24 mounted on at least one end of said axle.

26. (New) A method of making a compactor wheel for a compaction machine, said method comprising:

providing a rim having a face and an inner circumferential edge and an outer circumferential edge;

mounting a plurality of compaction cleats so as to be circumferentially spaced on and transversely spaced across the face of the rim; and

forming a cleat-free area circumferentially around the rim, on the face, that extends

widthwise from said inner edge across the rim toward the outer edge so as to be wide enough that refuse is less likely to be directed toward the axle of the compaction machine.

27. (New) The method as set forth in claim 26, wherein the cleat-free area is formed by at least one technique from the group consisting of removing an inner circumferential row of cleats, moving the inner row of cleats away from the inner edge of the rim, extending the inner circumferential edge of the rim inward toward the compaction machine or a combination thereof.

28. (New) A compactor wheel mountable on an axle of a compaction machine, said compactor wheel comprising:

- a hub mountable to an axle of a compaction machine;
- a rim mounted around the outer circumference of said hub, said rim having a face and an inner circumferential edge and an outer circumferential edge;
- a plurality of compaction cleats circumferentially spaced on, transversely spaced across and mounted to said face of said rim; and
- an axle guard system comprising a cleat-free area formed circumferentially around said rim on said face and having a width extending from said inner edge across said rim toward said outer edge a preselected distance.